In the High Court of Punjab and Haryana, Chandigarh

R.S.A. No. 1689 of 1980

Date of Decision: 9.5.2007

Smt. Hajra …Appellant

Versus

Bashir Ahmed …Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

PRESENT: Mr. Hemant Sarin, Advocate,
for the appellant.

Mr. R.S. Sihota, Senior Advocate, with
Mr. S.S. Kaliramna, Advocate,
for the respondent.

JUDGMENT

M.M. KUMAR, J (Oral)

This is defendant's appeal filed under Section 100 of the Code of Civil Procedure, 1908, challenging the judgment and decree dated 16.5.1980, passed by the learned Additional District Judge, Gurgaon, who had decreed the suit of the plaintiff-respondent and has set aside the view taken by the learned trial court. Accordingly, a decree for possession by pre-emption of the suit land fully detailed in para 1 of the plaint, was passed in favour of the plaintiff-respondent and against the defendant-appellant. The decree was conditional on the plaintiff-respondent depositing in the treasury under the orders of the trial court a sum of Rs. 3032.50 paise including 1/5th pre-emption amount if not already deposited on or before 13.6.1980. It was

further directed that in case the plaintiff-respondent failed to deposit the amount as aforesaid then the suit was deemed to have been dismissed.

When the appeal came up for consideration of this Court, no order staying execution of the decree was passed. Mr. R.S. Sihota, learned Senior counsel has placed on record a copy of the *Rapat Roznamcha*, dated 18.6.1980, which shows that the land in question has been transferred in the name of the plaintiff-respondent by a registered deed and mutation No. 714 has also been entered in his name. A photocopy of the *Rapat Roznamcha*, dated 18.6.1980, is taken on record as Mark-A.

It may, however, be mentioned that the plaintiff-respondent had the subsisting right of pre-emption on the date of sale i.e. 16.2.1978, effected by the defendant-appellant, on the date of filing of the suit i.e. 18.8.1979 and on the date of passing the decree i.e. on 16.5.1980. It is also not in dispute that the amendment in Section 15 of the Punjab Pre-emption Act (as applicable to the State of Haryana) in the year 1995 does not have any bearing on the facts of this case because the amendment has been held to be prospective by a Constitution Bench of Hon'ble the Supreme Court in the case of **Shyam Sunder v. Ram Kumar, JT 2001(6) SC 94**.

Apart from the above, the right of pre-emption of the plaintiff-respondent survives even today because the proceedings for partition are still pending. In that regard a reference may be made to the order dated 6.11.1979, passed by the Assistant Collector Ist Grade

directing the partition of the land in dispute. The aforementioned order was challenged before the Additional Collector, who videhis order dated 29.4.1980, set aside the order dated 6.11.1979, passed by the Assistant Collector Ist Grade and remanded the case to the Assistant Collector Ist Grade for fresh adjudication. The order of the Additional Collector was further challenged before the Commissioner by filing *Karyakari Appeal* (Executive Appeal), who upheld the order of the Additional Collector, vide its order dated 9.10.1980. Therefore, the situation as prevailing today is that the proceedings of partition are pending and no decision has so far been taken in those proceedings. The pendency of partition proceedings, in any case, does not affect the right of pre-emption as has been held by this Court in para 7 of the judgment in the case of **Smt. Babli Devi v. Ram Gopal, 1991 PLJ 651**, which reads as under:-

> " 7. Mere pendencyof partition proceedings does not cease the status of the joint owners of the suit land. It is only when after the order of partition, plan is prepared (plan G) when the partition proceedings stand completed. It is from there that the status of the parties being co-sharers cease. No orderof revenue officer effecting partition was produced on the file. In view of the averment made in the written statement impliedly admitting the plaintiffs to be co-sharers both the Courts below were right in coming to the conclusion regarding the status of the plaintiffs as co-sharers in the suit land."

In the facts and circumstances of the case, no question of law arises and it has to be necessarily held that the right of pre-emption subsists even today in favour of the plaintiff-respondent. Therefore, there is no merit in this appeal and the same is accordingly dismissed.

(M.M. KUMAR)
JUDGE

May 9, 2007
Pkapoor